

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 824

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE SOLID
WASTE ACT TO PROVIDE FOR SEPARATE FEE SCHEDULES FOR PERMIT
APPLICATION PROCESSING; RECONCILING CONFLICTING AMENDMENTS TO
THE SAME SECTION OF LAW IN LAWS 1991 BY REPEALING LAWS 1991,
CHAPTER 185, SECTION 2; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-9-3 NMSA 1978 (being Laws 1990,
Chapter 99, Section 3) is amended to read:

"74-9-3. DEFINITIONS.--As used in the Solid Waste Act:

A. "agricultural" means all methods of production
and management of livestock, crops, vegetation and soil. This
includes, but is not limited to, raising, harvesting and
marketing. It also includes, but is not limited to, the
activities of feeding, housing and maintaining animals such as

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underscored material = new
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1 cattle, dairy cows, sheep, goats, hogs, horses and poultry;

2 B. "board" means the environmental improvement
3 board;

4 C. "commercial hauler" means any person
5 transporting solid waste for hire by whatever means for the
6 purpose of disposing of the solid waste in a solid waste
7 facility, except that the term does not include an individual
8 transporting solid waste generated on or from ~~his~~ the
9 person's residential premises for the purpose of disposing of
10 it in a solid waste facility;

11 D. "construction and demolition debris" means
12 materials generally considered to be not water soluble and
13 nonhazardous in nature, including, but not limited to, steel,
14 glass, brick, concrete, asphalt roofing materials, pipe, gypsum
15 wallboard and lumber from the construction or destruction of a
16 structure as part of a construction or demolition project, and
17 includes rocks, soil, tree remains, trees and other vegetative
18 matter that normally results from land clearing or land
19 development operations for a construction project, but if
20 construction and demolition debris is mixed with any other
21 types of solid waste, whether or not originating from the
22 construction project, it loses its classification as
23 construction and demolition debris;

24 E. "densified-refuse-derived fuel" means a product
25 resulting from the processing of mixed municipal solid waste in

1 a manner that produces a fuel suitable for combustion in
2 existing or new solid-fuel-fired boilers;

3 F. "director" means the director of the
4 environmental improvement division of the [~~health and~~
5 ~~environment~~] department of environment;

6 G. "division" means the environmental improvement
7 division of the [~~health and environment~~] department of
8 environment;

9 H. "municipality" means any incorporated city, town
10 or village, whether incorporated under general act, special act
11 or special charter, incorporated counties and H class counties;

12 I. "permit modification" means to change the
13 material terms or conditions of a permit, including a
14 horizontal or vertical expansion of the solid waste facility
15 within the property boundary not to exceed five hundred acres
16 or the expansion of a solid waste facility beyond its existing
17 boundary, the combined total of which shall not exceed five
18 hundred acres, and the modification is issued by the division
19 under rules adopted by the board for permitting modifications
20 of solid waste facilities, but "permit modification" does not
21 mean a modification of pollution control systems in order to
22 comply with changes in federal or state statutes or regulations
23 relevant to the operation of the facility;

24 [~~F.~~] J. "person" means an individual or any entity,
25 including federal, state and local governmental entities,

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1 however organized;

2 [J.] K. "plan" or "state plan" means the solid
3 waste management plan required to be developed under Section [4
4 ~~of the Solid Waste Act~~] 74-9-4 NMSA 1978;

5 [K.] L. "program" or "state program" means the
6 comprehensive solid waste management program described in
7 Section [~~12 of the Solid Waste Act~~] 74-9-12 NMSA 1978;

8 [L.] M. "recyclable materials" means materials that
9 would otherwise become solid waste if not recycled and that can
10 be collected, separated or processed and placed in use in the
11 form of raw materials, products or densified-refuse-derived
12 fuels;

13 [M.] N. "recycling" means any process by which
14 recyclable materials are collected, separated or processed and
15 reused or returned to use in the form of raw materials or
16 products;

17 [N.] O. "solid waste" means any garbage, refuse,
18 sludge from a waste treatment plant, water supply treatment
19 plant or air pollution control facility and other discarded
20 material, including solid, liquid, semisolid or contained
21 gaseous material resulting from industrial, commercial, mining
22 and agricultural operations and from community activities.

23 "Solid waste" does not include:

24 (1) drilling fluids, produced waters and other
25 nondomestic wastes associated with the exploration, development

1 or production, transportation, storage, treatment or refinement
2 of crude oil, natural gas, carbon dioxide gas or geothermal
3 energy;

4 (2) fly ash waste, bottom ash waste, slag
5 waste and flue gas emission control waste generated primarily
6 from the combustion of coal or other fossil fuels and wastes
7 produced in conjunction with the combustion of fossil fuels
8 that are necessarily associated with the production of energy
9 and that traditionally have been and actually are mixed with
10 and are disposed of or treated at the same time with fly ash,
11 bottom ash, boiler slag or flue gas emission control wastes
12 from coal combustion;

13 (3) waste from the extraction, beneficiation
14 and processing of ores and minerals, including phosphate rock
15 and overburden from the mining of uranium ore, coal, copper,
16 molybdenum and other ores and minerals;

17 (4) agricultural waste, including, but not
18 limited to, manures and crop residues returned to the soil as
19 fertilizer or soil conditioner;

20 (5) cement kiln dust waste;

21 (6) sand and gravel;

22 (7) solid or dissolved material in domestic
23 sewage or solid or dissolved materials in irrigation return
24 flows or industrial discharges that are point sources subject
25 to permits under Section 402 of the Federal Water Pollution

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1 Control Act, 33 U.S.C. Section 1342 or source, special nuclear
2 or by-product material as defined by the Atomic Energy Act of
3 1954, 42 U.S.C. Section 2011 et seq.;

4 (8) densified-refuse-derived fuel; or

5 (9) any material regulated by Subtitle C of
6 the federal Resource Conservation and Recovery Act of 1976,
7 substances regulated by the federal Toxic Substances Control
8 Act or low-level radioactive waste;

9 ~~[P.]~~ P. "solid waste district" means a geographical
10 area designated by the board as a solid waste district under
11 Section ~~[11 of the Solid Waste Act]~~ 74-9-11 NMSA 1978;

12 ~~[P.]~~ Q. "solid waste facility" means any public or
13 private system, facility, location, improvements on the land,
14 structures or other appurtenances or methods used for
15 processing, transformation, recycling or disposal of solid
16 waste, including landfill disposal facilities, transfer
17 stations, resource recovery facilities, incinerators and other
18 similar facilities not specified, but does not include
19 equipment specifically approved by order of the director to
20 render medical waste noninfectious or a facility ~~[which]~~ that
21 is permitted pursuant to the provisions of the Hazardous Waste
22 Act and does not apply to a facility fueled by a densified-
23 refuse-derived fuel that accepts no other solid waste;

24 ~~[Q.]~~ R. "source reduction" means any action that
25 causes a net reduction in the generation, volume or toxicity of

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1 solid waste;

2 [R-] S. "special waste" means solid waste that has
3 unique handling, transportation or disposal requirements to
4 assure protection of the environment and the public health and
5 safety;

6 [S-] T. "transformation" means incineration,
7 pyrolysis, distillation, gasification or biological conversion
8 other than composting; and

9 [F-] U. "yard refuse" means vegetative matter
10 resulting from landscaping, land maintenance and land clearing
11 operations."

12 Section 2. Section 74-9-8 NMSA 1978 (being Laws 1990,
13 Chapter 99, Section 8, as amended by Laws 1991, Chapter 185,
14 Section 2 and also by Laws 1991, Chapter 194, Section 3) is
15 amended to read:

16 "74-9-8. BOARD ADOPTION OF INITIAL REGULATIONS.--No later
17 than December 31, [~~1991~~] 2010, the board shall adopt
18 regulations under the authority of this section to:

19 A. implement, administer and enforce a program for
20 the cost-effective and environmentally safe siting,
21 construction, operation, maintenance, closure and post-closure
22 care of solid waste facilities, including financial
23 responsibility requirements for solid waste facility owners and
24 operators and also including requirements that assure that the
25 relative interests of the applicant, other owners of property

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1 likely to be affected and the general public will be considered
2 prior to the issuance of a permit for a solid waste facility;

3 B. define the solid wastes that are considered
4 special wastes;

5 C. establish specific requirements for the
6 detoxification and disposal of special wastes;

7 D. establish classifications of solid waste
8 facilities and define what types of solid waste may be
9 processed or disposed of in each classification;

10 E. establish performance standards for the
11 construction and operation of solid waste facilities that will
12 assure protection of ground water quality from degradation by
13 contaminants from solid waste facilities consistent with the
14 provisions of the Water Quality Act and the regulations and
15 standards established under that act by the water quality
16 control commission, provided such regulations shall not allow
17 permitting of any active solid waste facility larger than five
18 hundred acres;

19 F. establish performance standards for
20 transformation facilities that will assure protection of the
21 state's environment;

22 G. establish requirements and procedures for the
23 granting or denial of an application to modify a solid waste
24 facility permit under Section 74-9-25 NMSA 1978;

25 H. establish requirements and procedures for

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1 commercial haulers to minimize littering and otherwise prevent
2 degradation of the environment;

3 ~~[I. establish an applicant fee schedule for~~
4 ~~processing permit applications that is based on costs of~~
5 ~~application review incurred by the division and also costs~~
6 ~~incurred for investigations of applicants by state departments~~
7 ~~and agencies other than the division, which regulation shall~~
8 ~~provide for the reimbursement of these costs to the division or~~
9 ~~other department or agency from the fees charged and shall also~~
10 ~~limit the fee to be not greater than ten thousand dollars~~
11 ~~(\$10,000)]~~

12 I. establish an applicant fee schedule, not to
13 exceed ten thousand dollars (\$10,000), for publicly owned
14 facilities to pay for processing permit applications based on
15 the costs of application processing and costs incurred for
16 investigations of applicants by state departments and agencies
17 other than the division;

18 J. establish a fee schedule for processing
19 applications for permits and permit modifications for privately
20 owned facilities that is based on costs of application review
21 incurred by the division and also costs incurred for
22 investigations of applicants by state departments and agencies
23 other than the division, which regulations shall provide for
24 the reimbursement of these costs to the division or other
25 departments or agencies from the fees charged and shall limit

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1 the total fee to be not greater than thirty thousand dollars
2 (\$30,000) for privately owned facilities;

3 K. establish a fee schedule for reimbursement of
4 costs incurred annually by the division for technical and
5 administrative oversight of permitted privately owned
6 facilities that have opted into a twenty-year permit pursuant
7 to Section 74-9-24 NMSA 1978 that is not greater than fifty
8 thousand dollars (\$50,000) per year for privately owned
9 facilities that receive four hundred thousand tons or more per
10 year; twenty-five thousand dollars (\$25,000) per year for
11 facilities that receive less than four hundred thousand tons
12 per year but more than two hundred thousand tons per year; and
13 twelve thousand five hundred dollars (\$12,500) per year for
14 facilities that receive two hundred thousand tons or less per
15 year;

16 [~~J.~~] L. establish requirements and procedures for a
17 person to obtain a variance from the application of a
18 substantive regulation to the person if the person files a
19 written application for a variance with the director and
20 demonstrates to the director's satisfaction that:

21 (1) application of the regulation would result
22 in an arbitrary and unreasonable taking of the applicant's
23 property or would impose an undue economic burden upon any
24 lawful business, occupation or activity; and

25 (2) granting the variance will not result in

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1 any condition injurious to human health, safety or welfare or
2 the environment;

3 ~~[K.]~~ M. assure that no variance will be granted
4 under the provisions of Subsection ~~[J]~~ L of this section until
5 the director has considered the relative interests of the
6 applicant, other owners of property likely to be affected and
7 the general public and that any variance or renewal of a
8 variance shall be granted for time periods and under conditions
9 consistent with reasons for the ~~[various]~~ variance but within
10 the following limitations:

11 (1) if the variance is granted on the grounds
12 that there are no practicable means known or available for the
13 adequate prevention of degradation of the environment or the
14 risk to the public health, safety or welfare, it shall continue
15 only until the necessary means for the prevention of the
16 degradation or risk become known and available; or

17 (2) if the variance is granted on the grounds
18 that it is justified to relieve or prevent hardship of a kind
19 other than that provided for in Paragraph (1) of this
20 subsection, it shall not be granted for more than one year;

21 ~~[L.]~~ N. establish a list of solid wastes that shall
22 not be transferred, disposed of or transformed in a solid waste
23 facility and prohibit the disposal or transformation of those
24 solid wastes in solid waste facilities;

25 ~~[M.]~~ O. establish recordkeeping procedures for

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1 solid waste transfer, landfill disposal and transformation
2 facilities that shall include requirements for recording the
3 type, amount and origin of solid waste transferred, disposed of
4 or transformed at the facility and that require operators of
5 landfill disposal, solid waste transfer and transformation
6 facilities within the state to:

7 (1) maintain records in a form required by the
8 division and file them with the division indicating the type,
9 amount, origin and location in a landfill disposal facility of
10 solid waste accepted by the facility;

11 (2) maintain copies of the records required
12 under Paragraph (1) of this subsection after closure in a
13 manner and for the length of time prescribed by the division;
14 and

15 (3) make all required records available for
16 inspection by the division and the general public during normal
17 business hours; and

18 [~~N.~~] P. require the division to establish a solid
19 waste facility operator certification program."

20 Section 3. Section 74-9-24 NMSA 1978 (being Laws 1990,
21 Chapter 99, Section 24, as amended) is amended to read:

22 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND
23 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING
24 REQUIREMENT.--

25 A. The director, within one hundred eighty days

1 after the application is deemed complete and after a public
 2 hearing, shall issue a permit, issue a permit with terms and
 3 conditions or deny a permit application. The director may deny
 4 a permit application on the basis of information in the
 5 application or evidence presented at the hearing, or both, if
 6 [he] the director makes a finding that granting the permit
 7 would be contradictory to or in violation of the Solid Waste
 8 Act or any regulation adopted [~~under it. He~~] pursuant to the
 9 provisions of that act. The director may also deny a permit
 10 application if the applicant fails to meet the financial
 11 responsibility requirements established by the board [~~under~~]
 12 pursuant to the provisions of Subsection A of Section 74-9-8
 13 NMSA 1978 and Section 74-9-35 NMSA 1978.

14 B. The director may deny any permit application or
 15 revoke a permit if [he] the director has reasonable cause to
 16 believe that [~~any~~] a person required to be listed on the
 17 application pursuant to Section 74-9-20 NMSA 1978 has:

18 (1) knowingly misrepresented a material fact
 19 in application for a permit;

20 (2) refused to disclose or failed to disclose
 21 the information required [~~under~~] pursuant to the provisions of
 22 Section 74-9-21 NMSA 1978;

23 (3) been convicted of a felony or other crime
 24 involving moral turpitude within ten years immediately
 25 preceding the date of the submission of the permit application;

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1 (4) been convicted of a felony, within ten
2 years immediately preceding the date of the submission of the
3 permit application, in any court for any crime defined by state
4 or federal statutes as involving or being restraint of trade,
5 price-fixing, bribery or fraud;

6 (5) exhibited a history of willful disregard
7 for environmental laws of any state or the United States; or

8 (6) had any permit revoked or permanently
9 suspended for cause under the environmental laws of any state
10 or the United States.

11 C. In making a finding under Subsection B of this
12 section, the director may consider aggravating and mitigating
13 factors presented by any party at the hearing.

14 D. If an applicant whose permit is being considered
15 for denial or revocation on any basis provided in this section
16 has submitted an affirmative action plan that has been approved
17 in writing by the director and plan approval includes a period
18 of operation under a conditional permit or license that will
19 allow the applicant a reasonable opportunity to affirmatively
20 demonstrate its rehabilitation, the director may issue a
21 conditional license for a reasonable period of time of
22 operation. In approving an affirmative action plan intended to
23 affirmatively demonstrate rehabilitation, the director may
24 consider the following factors: implementation by the
25 applicant of formal policies; training programs and management

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1 control to minimize and prevent the occurrence of future
2 violations; installation by the applicant of internal
3 environmental auditing programs; the discharge of individuals
4 convicted of any crimes set forth in Subsection B of this
5 section; and such other factors as the director may deem
6 relevant.

7 E. Within sixty days of the date of the closing of
8 the hearing on a permit application, the director shall notify
9 the applicant by certified mail of the issuance, denial or
10 issuance with conditions of a permit and the reasons [~~therefor~~]
11 for it. Any person who has made a written request to the
12 director to be notified of the action taken on the application
13 shall be given written notice of the director's action.

14 F. No permit for the operation of a solid waste
15 facility shall be valid until the permit or a notice of the
16 permit and a legal description of the property on which the
17 facility is located are filed and recorded in the office of the
18 county clerk in each county in which the facility is located.

19 G. Except as otherwise provided by law:

20 (1) each permit issued for a publicly owned
21 and publicly or privately operated new or repermited existing
22 landfill, transfer station, recycling facility or composting
23 facility shall remain in effect throughout the active life of
24 the landfill, transfer station, recycling facility or
25 composting facility as described in the approved permit or for

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1 twenty years, whichever ~~[is less]~~ the applicant chooses, but
2 shall not exceed twenty years. Each permit issued for a
3 publicly owned landfill, transfer station, recycling facility
4 or composting facility that is privately operated pursuant to a
5 contract of no more than four years duration entered into in
6 accordance with the state or local procurement code shall
7 remain in effect throughout the active life of the landfill,
8 transfer station, recycling facility or composting facility as
9 described in the approved permit or for twenty years, whichever
10 is less. ~~[Each time the contract is renewed, the director~~
11 ~~shall review the contract to determine whether the term of the~~
12 ~~permit shall be governed by this paragraph or Paragraph (2) of~~
13 ~~this section.]~~ Each permit shall be reviewed by the department
14 of environment at least once every ten years. The review shall
15 address the operation, compliance history, financial assurance
16 and technical requirements for the landfill, transfer station,
17 recycling facility or composting facility. At the time of the
18 review there shall be public notice in the manner prescribed by
19 Section 74-9-22 NMSA 1978. If the secretary of environment
20 determines that there is significant public interest, a
21 nonadjudicatory hearing shall be held as part of the review.
22 The secretary may require appropriate modifications of the
23 permit, including modifications necessary to make the permit
24 terms and conditions consistent with statutes, regulations or
25 judicial decisions;

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1 (2) each permit issued for a privately owned
2 new or repermited existing [~~landfill, transfer station,~~
3 ~~recycling facility or composting~~] facility shall remain in
4 effect [~~for ten years or for the active life of the facility,~~
5 ~~whichever is less. Each permit issued for a publicly owned~~
6 ~~landfill, transfer station, recycling facility or composting~~
7 ~~facility that is leased to a private person or that is operated~~
8 ~~by a private person pursuant to a contract of more than four~~
9 ~~years duration shall remain in effect for ten years or for the~~
10 ~~active life of the landfill or facility, whichever is less] for
11 twenty years, if the applicant chooses. If the applicant opts
12 for a twenty-year permit, the annual fees for costs incurred by
13 the division for technical and administrative review shall be
14 reimbursed pursuant to Section 74-9-8 NMSA 1978. Applicants
15 for permits sought after July 1, 2009 shall indicate in their
16 application whether they are seeking a permit term of twenty
17 years; provided that the facility in question is in compliance
18 with the Solid Waste Act and the solid waste management
19 regulations. Owners of privately held facilities permitted
20 prior to July 1, 2009 shall submit in writing to the division
21 no later than thirty days after the board promulgates
22 regulations pursuant to requirements in Section 74-9-8 NMSA
23 1978 their decision to opt into the twenty-year permit cycle.
24 If a privately owned facility opts into the twenty-year permit
25 cycle, the twenty-year permit term shall be reduced by the~~

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1 number of years the facility has operated under its current
2 permit. For privately owned facilities that opt into the
3 twenty-year permit term, the facility owners shall adjust
4 financial assurance coverage if necessary to accommodate
5 requirements pursuant to the solid waste management
6 regulations. A publicly owned facility that is leased to a
7 private person or that is operated by a private person pursuant
8 to a contract of more than four years duration shall remain in
9 effect for twenty years. Each permit shall be reviewed at
10 least every [five] ten years by the department of environment.
11 Interested parties may petition the department for review, in
12 addition to the [~~five-year~~] ten-year review, provided that the
13 director [~~shall have~~] has discretion to determine whether there
14 is good cause for such an additional review. The review shall
15 address the operation, compliance history, financial assurance
16 and technical requirements for the landfill, transfer station,
17 recycling facility or composting facility. At the time of the
18 review there shall be public notice in the manner prescribed by
19 Section 74-9-22 NMSA 1978. If the secretary of environment
20 determines that there is significant public interest, a
21 nonadjudicatory hearing shall be held as part of the review.
22 The secretary may require appropriate modifications of the
23 permit, including modifications necessary to make the permit
24 terms and conditions consistent with statutes, regulations or
25 judicial decisions; and

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underscoring material = new
[bracketed material] = delete

1 (3) the term of permits for facilities not
2 specified by this subsection shall be governed by existing or
3 amended regulations adopted by the board.

4 H. The director shall issue separate special waste
5 permits for all solid waste facilities that transfer, process,
6 transform, recycle or dispose of special waste pursuant to
7 regulations adopted by the board."

8 Section 4. REPEAL.--Laws 1991, Chapter 185, Section 2 is
9 repealed.